

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-09-29,503

In re: 1412 Pennsylvania Avenue, S.E., Unit B

Ward Six (6)

EBONY HARDY

Tenant/Appellant/Cross-Appellee

v.

LOUIS SIGALAS

Housing Provider/Appellee/Cross-Appellant

ORDER ON MOTION FOR RECONSIDERATION

August 7, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 to -510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 govern these proceedings.

¹ The OAH assumed jurisdiction over the conduct of hearings on tenant petitions from the Rental Accommodations and Conversion Division (RACD) and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Repl. 2007). The functions and duties of the RACD were transferred to the RAD by the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (Sept. 18, 2007) (codified at D.C. Official Code § 42-3502.03a (Repl. 2010)).

I. PROCEDURAL HISTORY²

On September 10, 2010, the Tenant Ebony Hardy (Tenant) residing at 1412 Pennsylvania Avenue, S.E., Unit B (Housing Accommodation), filed a Notice of Appeal from a Final Order issued by Administrative Law Judge (ALJ) Caryn L. Hines: Hardy v. Sigalas, RH-TP-09-29,503 (OAH May 7, 2009). On February 10, 2011, the Housing Provider, Louis Sigalas (Housing Provider) filed a Notice of Cross-Appeal from the ALJ's Order for Attorney's Fees.

On February 3, 2012 the Commission issued a Notice of Scheduled Hearing and Notice of Certification of Record (Hearing Notice), setting the hearing on the Tenant's Notice of Appeal and the Housing Provider's Notice of Cross-Appeal for Thursday, March 15, 2012, at 2:00 p.m. Hearing Notice at 1. The record reflects that the Hearing Notice was mailed, postage prepaid, by first class U.S. mail, to the Tenant and the Housing Provider on February 3, 2012, to the parties' addresses contained in the Notice of Appeal and Notice of Cross-Appeal, respectively.³ See Hearing Notice at 3. The Hearing Notice stated "The failure of either party to appear at the scheduled time will not preclude the Commission from hearing the oral argument of the appearing party and/or disposing of the appeal. Failure of an Appellant to appear may result in the dismissal of the party's appeal." *Id.*

The Commission held a hearing on March 15, 2012. The hearing began at 2:13 p.m. and the Commission noted that the Tenant (or any representative for the Tenant) failed to appear. Hearing CD (RHC Mar. 15, 2012) at 2:13 p.m. The Housing Provider made an oral motion to

² The procedural history prior to this Order on Reconsideration is contained in the Commission's prior decision in this case, Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 2014) (Decision and Order).

³ On February 9, 2011, the Commission issued an order granting the Tenant's counsel's Motion to Withdraw Appearance (Motion to Withdraw). See Hardy, RH-TP-09-29,503 (RHC Feb. 9, 2011) at 1-3. The order was mailed postage prepaid, by first class U.S. mail to the Tenant at the address provided in the Motion to Withdraw, and to the Housing Provider. See *id.* at 4.

dismiss the Tenant's claims made in the Tenant's Notice of Appeal. Hearing CD (RHC Mar. 15, 2012) at 2:15 p.m.

On July 21, 2014, the Commission issued its Decision and Order, *see supra* at 2 n.2, dismissing the Tenant's Notice of Appeal with prejudice. *See* Decision and Order at 22-25. On July 25, 2014, the Tenant filed a Motion for Reconsideration of the Commission's Order and Decision (Motion for Reconsideration),⁴ which stated the following bases for reconsideration:

1. Judgment for the Housing Provider for possession of the property was entered on the Docket on November 19, 2010. (2008 LTB 040686 :Sigalas, [sic] Louis vs. Hardy, Ebony)
2. Tenant did, in fact, move out of the property on December 7, 2010. (Exhibit 1 – new lease).
3. Ebony Hardy address, [sic] as of December 7, 2010 is 1503 Pennsylvania Avenue, SE, Washington, DC 20003.
4. Tenant at no time ever received and [sic] notifications from the Commission or the Housing Provider due to the fact that all communications were sent to the address she had vacated.
5. It was only due to the fact that the mail carrier for Ms. Hardy's place of employment handled the mail delivery for that entire area.
6. On July 22, 2014, the mail carrier having recognized the name on this notification, delivered the mail to Ms. Hardy's place of employment which was in the same block.
7. Upon receipt of this notification from the Commission, Ms. Hardy realized that she was never made aware of any previous hearings that was [sic] noted on the Final Order and therefore was unable to appear.
8. At no time was any information or requests for appearance sent to her new/current address.
9. Therefore, unaware of the request for her appearance, Ms. Hardy never appeared before the Commission for said hearings.

Motion for Reconsideration at 1-2 (emphasis in original).

⁴ The Commission observes that the Motion for Reconsideration is dated July 24, 2014; however, the date stamp indicates it was received by the Commission on July 25, 2014.

II. DISCUSSION

In addressing this *pro se* Motion for Reconsideration, the Commission is mindful of the important role that lay litigants play in the Act's enforcement. Goodman v. D.C. Rental Hous. Comm'n, 575 A.2d 1293, 1298-99 (D.C. 1990). *See also* Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985); Tenants of 4021 9th St., N.W. v. E & J Props., LLC, HP 20,812 (RHC June 11, 2014); Jackson v. Peters, RH-TP-12-28,898 (RHC Sept. 27, 2013). Nonetheless, "while it is true that a court must construe *pro se* pleadings liberally . . . the court may not act as counsel for either litigant." Flax v. Schertler, 935 A.2d 1091, 1107 n. 14 (D.C. 2007) (quoting In re Webb, 212 B.R. 320, 321 (Bankr. Fed. App. 1997)). *See* Tenants of 4021 9th St., N.W., HP 20,812; Jackson, RH-TP-12-28,898. As the District of Columbia Court of Appeals (DCCA) has asserted, a *pro se* litigant "cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance." Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 979 (D.C. 1999) (quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1993)). *See* Tenants of 4021 9th St., N.W., HP 20,812; Jackson, RH-TP-12-28,898.

The Commission observes that the sole grounds on which the Tenant considers the Commission's Decision and Order to be erroneous or unlawful is that she did not receive the Commission's Hearing Notice.⁵ *See* Motion for Reconsideration at 1-2. The Tenant claims that the Commission failed to properly serve her with the Hearing Notice, among other documents, because her address changed on December 7, 2010. *See* Motion for Reconsideration at 1.

⁵ Under 14 DCMR § 3823.1, an adversely affected party of a Commission order may file a motion for reconsideration within ten (10) days of receipt of the decision. Under 14 DCMR § 3823.2, a motion for reconsideration "shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful."

The Commission has stated that where a party alleges that she did not receive proper notice of a Commission hearing, order, or decision, the Commission will consider factors relating to whether the mailing of the notice to the tenant by the Commission was proper. *See, e.g., Barnes-Mosaid v. Zalco Realty, Inc.*, RH-TP-08-29,316 (RHC Sept. 28, 2012) at 5; *Green v. Eva Realty*, RH-TP-07-29,118 (Sept. 4, 2009). *See also Radwan v. D.C. Rental Hous. Comm'n*, 683 A.2d 478, 481 (D.C. 1996). There arises a presumption of receipt of notice if the agency has properly mailed it. *See, e.g., Foster v. District of Columbia*, 497 A.2d 100, 102 n.10 (D.C. 1985); *Allied Am. Mut. Fire Ins. Co. v. Paijze*, 143 A.2d 508, 510 (D.C. 1958); *Barnes-Mosaid*, RH-TP-08-29,316; *Green*, RH-TP-07-29,118. Notice is considered properly mailed when the record indicates notice of the hearing was mailed to the parties at their correct addresses. *See Barnes-Mosaid*, RH-TP-08-29,316; *Green*, RH-TP-07-29,118.



It is incumbent upon a party to provide the Commission with notice of a change of address, and absent any notice, the Commission will continue to send mail to the party's address of record. *See Brookens v. Hagner Mgmt. Corp.*, TP 3788 (RHC July 2, 2002) at 5 n.5; *see also Williams v. Ellis*, TP 23,313 (RHC Mar. 25, 1998) at 3-4; *Joyce v. Webb*, TPs 20,720 & 20,739 (RHC Jan. 30, 1998) at 9-12; *Reid v. Sinclair*, TP 11,334 (RHC July 25, 1991) at 3-4.

As the Commission noted in its Decision and Order, the Commission mailed the Hearing Notice by first class mail to the Tenant's address of record, as provided in the Motion to Withdraw. *See* Decision and Order at 24; Hearing Notice at 3. Although the Tenant states in her Motion for Reconsideration that her address changed prior to the issuance of the Notice of Hearing, on December 7, 2010, the Commission's review of the record revealed, and the Tenant does not contest, that the Tenant had filed no notification of a change of address with the Commission at any point prior to the filing of her Motion for Reconsideration on July 25, 2014.

See Motion for Reconsideration at 1. Furthermore, the record contains no indication that the Commission's mailings after December 7, 2010 to the Tenant at her former address were returned as undeliverable.

Thus, where the Tenant did not notify the Commission of any change of address prior to the Motion for Reconsideration, and where the Hearing Notice was mailed to the Tenant's address of record and was not returned as undeliverable, the Commission determines that the mailing of the Hearing Notice was proper. See Barnes-Mosaid, RH-TP-08-29,316; Green, RH-TP-07-29,118. Based on the foregoing, the Commission denies the Tenant's Motion for Reconsideration.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN

CLAUDIA L. MCKOIN, COMMISSIONER

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission . . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700


CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION FOR RECONSIDERATION** in RH-TP-09-29,503 was mailed, postage prepaid, by first class U.S. mail on this **7th day of August, 2014** to:

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